

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OFFICE COPY
JUDGE SWAIN

2K6 LLC,

Plaintiff,

v.

SONDRA ROBERTS LTD.,

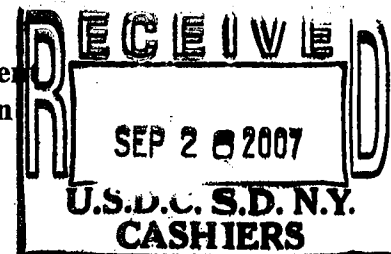
Defendant.

Civil Action No.

07 CIV 8371

COMPLAINT

Trade Dress Infringement
and Unfair Competition



Plaintiff 2K6 LLC ("2K6") by its attorneys, Akin Gump Strauss Hauer & Feld LLP, as and for its complaint against Defendant Sondra Roberts Ltd. ("Sondra Roberts"), alleges as follows:

JURISDICTION

1. This is an action for unfair competition in the nature of trade dress infringement under the Lanham Act, 15 U.S.C. § 1125, and under New York common law. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 because this is a civil action arising under the federal Lanham Act. This Court has subject matter jurisdiction over the remaining count, pursuant to 28 U.S.C. § 1338(b), because the count is joined with a substantial and related federal claim under the Lanham Act.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events on which this action is based occurred within this district.

THE PARTIES

3. 2K6 is a limited liability company under the laws of the State of New York with its principal place of business at 300 East 51st Street, Suite 16A, New York, New York 10022 .

4. Upon information and belief, Sondra Roberts is organized as a corporation under the laws of the State of New York with its principal place of business at 1730 Corporate Drive, Boynton Beach, Florida 33426.

STATEMENT OF RELEVANT FACTS

5. 2K6 is a purveyor of high-fashion designer handbags designed exclusively by its founding designer, Katherine Kwei. 2K6, although having only launched its business in 2006, has already made a notable impact in the world of high-end handbags as a result of the fresh and distinctive Katherine Kwei designs. The extreme high quality of materials utilized by 2K6 in executing the Katherine Kwei designs has further gained the respect of the industry, the trade and popular press, and the purchasing public.

6. 2K6's handbags all include a common design element: intricate, woven knots positioned in series on the handbags. See Exhibit A (depictions of 2K6's Katherine Kwei-designed handbags). Katherine Kwei's designs evoke the complex symbolic knots of China, her family's homeland.

7. The distinctive woven knot design element, although also fresh and aesthetically pleasing, is a feature of 2K6 handbags that was intended by the designer to function primarily as a "brand," an indicator of the source of such bags, and has been promoted as such (hereinafter, the "Weave Design Mark"). Although the luxuriousness of the materials of 2K6's Katherine Kwei-designed handbags has been recognized in the press, because fine materials are to be expected in high-end handbags it is the intricate Weave Design Mark of 2K6's handbags that has

come to be recognized as the “signature” element of the products. Such a “signature” tells members of the industry, purchasers, and members of the public that see the handbag being carried, that this handbag is a Katherine Kwei-designed bag. Copies of exemplary publications recognizing the “signature” Weave Design Mark are attached hereto as Exhibit B.

8. In the United States, 2K6 launched the first Katherine Kwei handbag collection in or around September 2006. Since the launch, 2K6’s Katherine Kwei designs have achieved significant positive press coverage and commercial success, unusual for an entrepreneurial newcomer to a very competitive field dominated by established design houses.

9. 2K6’s handbags and 2K6’s resident designer, Katherine Kwei, have been featured in popular magazines and fashion publications around the world. The handbags have also gained immediate popularity with celebrities such as Jennifer Lopez, Eva Longoria, and Cameron Diaz. The numerous published photographs of her handbags being carried by such celebrities have created even greater recognition of the Weave Design Mark among the general public. Copies of publications, articles, and photographs promoting 2K6’s handbags with the Weave Design Mark are incorporated hereto as Exhibit C.

10. 2K6’s popularity among the fashion industry and consumers has been further raised through its receipt of an award for its “Zara” handbag design as being “The Best Handbag in Overall Style and Design” by The Handbag Designer 101. See Exhibit B.

11. As a result of 2K6’s promotional and sales efforts, and fueled by unsolicited press coverage, the Weave Design Mark has become well recognized as an indicator of source of handbags in 2K6, exclusively. As a result of such success and popularity, the Weave Design Mark is a trademark and trade dress of 2K6 that that is firmly established in the mind of the

relevant public. 2K6's handbags have been sold through retail outlets and through authorized retail Internet websites.

12. 2K6 has taken steps to protect its common law rights in the Weave Design Mark, and has filed Application Serial No. 77/233,539 for such mark in the U.S. Patent and Trademark Office. This application is currently pending. One of 2K6's handbag designs incorporating the Weave Design Mark is entitled "Zara." True and correct copies of photographic reproductions of the "Zara" product are attached hereto as Exhibit D. The "Zara" handbag employs a trade dress comprising the Weave Design Mark, and such trade dress, through the efforts of 2K6 has acquired secondary meaning among the relevant public as an indicator of source in 2K6.

13. Designer handbag companies are plagued with counterfeiting and other unauthorized copying of their products that infringes their intellectual property rights. In addition to blatant counterfeiters, there exist copyists who "follow the trends," scout successful designs, misappropriate such designs, and sell handbags with the copied designs while such designs remain popular.

14. Sondra Roberts is an established business that designs and sells handbags. Sondra Roberts promotes its handbags as "following the trends." See "About Us" at www.sondraroberts.com, Exhibit E.

15. "Following the trend" created by 2K6's Katherine Kwei designs and its Weave Design Mark, Sondra Roberts produced and sold handbags substantially identical to 2K6's "Zara" handbag, as noted above for receiving a recent design award, but with lower quality materials ("Infringing Bags"). True and correct copies of photographic reproductions of Sondra Roberts's Infringing Bags are attached hereto as Exhibit F.

16. In or about the spring of 2007, 2K6 became aware that Sondra Roberts was selling its Infringing Bags. Upon information and belief, such bags were being sold through retail outlets such as Lord & Taylor and Macy's, but also through discount outlets such as DSW and Sacco.

17. Upon information and belief, Sondra Roberts has sold numerous Infringing Bags throughout the United States.

18. Sondra Roberts competes with 2K6 in the sale of handbags.

19. 2K6 and its designer, Katherine Kwei, have made several demands to Sondra Roberts informing Sondra Roberts of its rights and requesting that it cease and desist from manufacturing and selling the Infringing Bags.

20. On July 30, 2007, counsel for 2K6 sent a letter to Sondra Roberts, reiterating 2K6's rights, and requesting confirmation that Sondra Roberts would cease and desist from such infringing activities. Sondra Roberts responded by letter on August 1, 2007, refusing to recognize 2K6's intellectual property rights but noting that production of the Infringing Bags would discontinue sometime in the "Fall of 2007."

21. 2K6 contacted Sondra Roberts a third time by letter dated August 21, 2007 requesting that Sondra Roberts immediately and permanently discontinue further manufacture and sale of the Infringing Handbags and requesting additional information relevant to 2K6's damages. Sondra Roberts has not responded to this letter, and to date, has failed to provide any assurances that 2K6's rights do not continue to be violated. A true and correct copy of the parties' correspondence is attached hereto as Exhibit G.

FIRST CAUSE OF ACTION

Federal Unfair Competition

15 U.S.C. § 1125(a)(1)(A)

22. 2K6 incorporates by reference paragraphs 1 to 21 herein as if set forth in full.

23. 2K6's Weave Design Mark as it appears in the "Zara" handbag confers a unique look and feel, and overall appearance that functions as an indicator of source in 2K6.

24. 2K6's Weave Design Mark and the "Zara" trade dress have achieved extensive publicity, popularity, and success among the relevant public, so much that the public has come to associate such mark and trade dress with 2K6 and no other entity, thereby creating a valuable reputation and secondary meaning in such mark and trade dress.

25. 2K6's Weave Design Mark and "Zara" trade dress acquired secondary meaning prior to the sale by Sondra Roberts of the Infringing Bags.

26. 2K6's Weave Design Mark is non-functional.

27. 2K6's "Zara" trade dress is non-functional.

28. Sondra Roberts has transported and sold the Infringing Bags in commerce as contemplated by the Lanham Act.

29. The Infringing Bags display woven knots substantially identical to the Weave Design Mark. The Infringing Bags display the woven knots in a series in substantially the same position on the bags as does the "Zara" trade dress.

30. The Infringing Bags are likely to cause confusion, mistake, and deception among purchasers, potential purchasers, and the relevant public and trade as to the source of the

respective handbags and/or as to affiliation between the parties, causing harm to 2K6's reputation and goodwill.

31. There is also an extremely high likelihood of confusion among the public who encounter the Infringing Bags after the point of sale, when all tags which may be affixed at the point of sale are typically removed.

32. The Infringing Bags are likely to cause confusion as to such bags being designed, endorsed, or licensed by 2K6's designer, Katherine Kwei, when they are not.

33. 2K6 has not consented in any way, directly or indirectly, to Sondra Roberts's use of the Weave Design Mark or the "Zara" trade dress.

34. Sondra Roberts's adoption and use of mark and trade dress that is confusingly similar to 2K6's distinctive designs is a willful attempt to trade off of the substantial goodwill and reputation that 2K6 has developed.

35. 2K6 exercises no control over the nature and quality of the Infringing Bags provided by Sondra Roberts.

36. As a direct and proximate result of the wrongful acts of Sondra Roberts alleged above, 2K6 has suffered and will continue to suffer injury to its business, including but not limited to monetary damages. 2K6 is informed and believes that Sondra Roberts will continue to engage in the wrongful acts alleged above, unless enjoined by this Court.

SECOND CAUSE OF ACTION

Unfair Competition Under New York Common Law

37. 2K6 incorporates by reference paragraphs 1 to 36 herein as if set forth in full.

38. Sondra Roberts has infringed, and if not enjoined, will continue to infringe, 2K6's Weave Design Mark and "Zara" trade dress in a manner likely to cause confusion and in violation of the common law of unfair competition.

39. As a result of Sondra Roberts's actions, 2K6 has lost goodwill and, on information and belief, customers.

40. Upon information and belief, Sondra Roberts acted intentionally and in bad faith to compete unfairly with 2K6.

41. As a direct and proximate result of the wrongful acts of Sondra Roberts alleged above, 2K6 has suffered and will continue to suffer injury to its business, including but not limited to monetary injury.

PRAYER FOR RELIEF

2K6 incorporates by reference paragraphs 1 to 41 herein as if set forth in full.

WHEREFORE, 2K6 prays for relief as follows:

That this Court hold that Sondra Roberts has infringed 2K6's Weave Design Mark and trade dress and competed unfairly with 2K6;

That this Court hold that there is a substantial likelihood that Sondra Roberts will continue to infringe 2K6's mark and trade dress and compete unfairly with 2K6 unless enjoined from doing so;

That this Court grant a permanent injunction enjoining Sondra Roberts, its agents, servants, employees, attorneys, and those persons in active concert or participation with them, or any of them, from infringement of 2K6's mark and trade dress, and from unfairly competing with 2K6;

That this Court order 2K6 to surrender for destruction all infringing products as well as all materials, catalogs, promotional materials and the like which display or otherwise depict the infringing mark and trade dress, and other materials constituting infringement of 2K6's rights, in Sondra Roberts's possession, custody, or control pursuant to 15 U.S.C. § 1118;

That in any injunction, this Court order Sondra Roberts to file with the Court and serve on 2K6 within thirty (30) days after the service on Sondra Roberts of such injunction, a report in writing under oath setting forth in detail the manner and form in which Sondra Roberts has complied with the injunction;

That this Court order Sondra Roberts, jointly and severally, to account for and to pay to 2K6 Sondra Roberts's profits, and to award such profits and the actual damages suffered by 2K6 as a result of Sondra Roberts's acts, together with interest and costs pursuant to 15 U.S.C. § 1117(a);

That all damages sustained by 2K6 be trebled and that Sondra Roberts be compelled to pay damages pursuant to 15 U.S.C. § 1117(b);

That Sondra Roberts be compelled to pay 2K6's attorney fees, together with the costs of this suit pursuant to 15 U.S.C. § 1117(a);

That 2K6 has such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38(b), trial by jury is hereby demanded.

Dated: New York, New York
September 26, 2007

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: _____

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